

No. PD-0955-19

TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
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DEANA WILLIAMSON, CLERK

JONATHAN WILLIAM DAY,

Appellant

v.

THE STATE OF TEXAS,

Appellee

Appeal Cause No. 01-18-00289-CR
Tarrant County Criminal Court at Law No. 1

* * * * *

STATE'S BRIEF ON THE MERITS

* * * * *

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IDENTITY OF JUDGE, PARTIES, AND COUNSEL

- * The parties to the trial court's judgment are the State of Texas and Appellant, Jonathan William Day.
- * The trial judges were the Honorable Rainey Webb (voir dire) and Presiding Judge Daryl Coffey, Tarrant County Court at Law Number 1 (guilt and punishment).
- * Counsel for Appellant at trial were Robert K. Gill, 201 Main Street, Suite 801, Fort Worth, Texas 76102, and Tim Brown, 1901 Central Drive, Suite 706, Bedford, Texas 76021.
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- * Counsel for the State on appeal was Steven Baker, former Assistant Criminal District Attorney, 401 W. Belknap Street, Fort Worth, Texas 76196.
- * Counsel for the State before this Court is Emily Johnson-Liu, Assistant State Prosecuting Attorney, P.O. Box 13046, Austin, Texas 78711.

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* * * * *

STATE’S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

For the purpose of the exclusionary rule, discovering a warrant for the defendant’s arrest can attenuate the taint of an officer’s prior misconduct. For the purpose of evading’s requirement that the officer’s attempted arrest be “lawful,” it should have no lesser effect.

STATEMENT REGARDING ORAL ARGUMENT

The Court did not grant oral argument.

STATEMENT OF THE CASE

A jury convicted Appellant of evading arrest or detention.¹ He was sentenced to 220 days in county jail.² On appeal, he argued the evidence was insufficient to prove the lawfulness of the officer's attempted detention.³ The court of appeals held that while Appellant's initial detention was lawful, he should have been released when the officer eliminated that initial suspicion, and thus no jury could rationally find the detention lawful.⁴ The court of appeals reversed the conviction and rendered a judgment of acquittal.⁵

ISSUES

1. Can an officer's attempt to detain or arrest a suspect, which is otherwise lawful, be tainted by an earlier illegality and thereby negate evading's lawful-arrest-or-detention element, just as evidence is tainted under fruit-of-the-poisonous-tree?

¹ TEX. PENAL CODE § 38.04.

² CR 84; 4 RR 42.

³ He also raised two additional points of error that the court of appeals did not reach because it rendered a judgment of acquittal. *Day v. State*, No. 01-18-00289-CR, 2019 WL 2621740, at *4 (Tex. App.—Houston [1st Dist.] June 27, 2019) (not designated for publication).

⁴ *Id.* at *3-4.

⁵ *Id.* at *4.

2. Will discovery of an arrest warrant necessarily render an attempted seizure on the warrant “lawful” (despite an earlier illegality) for purposes of evading arrest?
3. If an earlier illegality can taint the officer’s attempted detention, does discovery of a warrant provide an independent source for the detention or attenuate the taint?

STATEMENT OF FACTS

City Marshal C.W. Heizer was waiting outside a house to serve an arrest warrant on Danny Branton when Appellant and five others arrived in an assortment of vehicles and converged in front of the house.⁶ No one was forthcoming about who or where Branton was, but they seemed nervous about Heizer’s presence.⁷ Officer Heizer determined Appellant wasn’t Branton from an I.D. but detained Appellant and several others who remained to see if any had warrants of their own.⁸

⁶ 3 RR 67-72.

⁷ 3 RR 72, 75.

⁸ 3 RR 73, 78, 80, 88, 93-94, 99. While Officer Heizer was figuring out who everyone was, two men left the scene and a third attempted to. 3 RR 73, 75, 76.

Appellant told Heizer he had a warrant,⁹ and dispatch confirmed it.¹⁰ Heizer let Appellant know he was going to arrest him on the warrant and allowed him to make a phone call while he was dealing with several of the other men.¹¹ Appellant rolled up a window on his vehicle and locked the door.¹² When he began walking away from the officer around the front of the SUV, Heizer told him, “You can’t leave, you’re under arrest.”¹³ Appellant ran off but was quickly caught.¹⁴

He was charged and convicted of evading arrest.¹⁵ On appeal, he challenged the element requiring that the detention he fled from be “lawful.” The court of appeals held that while Appellant’s initial detention may have been justified by the

⁹ 3 RR 79, 88. The officer assumed the admission concerned a fine-only offense, and told him, “I’m not worried about a Fort Worth traffic warrant.” 3 RR 79-80. Although not part of the evidence for sufficiency purposes, it appears the officer changed his mind when the warrant turned out to be for a “county level” offense. 3 RR 28 (suppression hearing).

¹⁰ The warrant dispatch discovered was not from Fort Worth. 3 RR 81-82, 90.

¹¹ 3 RR 82-84.

¹² 3 RR 83-84.

¹³ 3 RR 83-84.

¹⁴ 3 RR 82-84, 91-92.

¹⁵ CR 6 (information), 83 (jury verdict).

belief that he was the man Officer Heizer was looking for,¹⁶ once he determined that he was not, there was no reasonable suspicion to continue the detention.¹⁷ For the court of appeals, that doomed the sufficiency of the “lawfulness” element. Following right on the heels of the conclusion that Appellant should have been released once he was determined not to be Branton, the court of appeals held:

Based on the totality of the circumstances, . . . there is insufficient evidence of specific, articulable facts showing reasonable suspicion for Heizer’s detention of appellant. Therefore, there is no evidence from which a rational jury could determine that appellant’s detention was lawful. Accordingly, we sustain appellant’s first point of error.¹⁸

The opinion made only one mention of Appellant’s arrest warrant, and this was in its recital of the parties’ arguments: “Appellant further asserts that Heizer’s subsequent discovery of his warrant and his attempt to flee do not change the unlawfulness of the initial detention.”¹⁹

¹⁶ Heizer did not know Branton personally and only had an old black and white photograph of Branton to aid in his identification. 3 RR 69-70, 72.

¹⁷ *Day*, 2019 WL 2621740, at *3.

¹⁸ *Id.* (citations omitted).

¹⁹ *Id.* at *2.

The State Prosecuting Attorney filed a motion for rehearing and argued that the detention lawful either because an earlier illegality did not make a seizure based on the warrant illegal or because discovery of the warrant attenuated any taint. The court of appeals denied the motion without changing the opinion.²⁰

SUMMARY OF THE ARGUMENT

Evading arrest requires that the detention or arrest the defendant flees from be “lawful.” In every sense, Officer Heizer’s attempted detention of Appellant met this requirement. Appellant had a warrant out for his arrest. Heizer knew this, and Appellant knew he knew this and was attempting to act on it. Whether analyzed in a sufficiency or suppression hearing context, the warrant authorized Appellant’s seizure. Even if Heizer had detained Appellant too long before discovering the warrant, the pre-existing warrant either provided untainted authorization to detain and arrest him or its discovery attenuated any taint.

²⁰ Letter dated August 8, 2019, *Jonathan William Day v. State*, No. 01-18-00289-CR, available on the First Court of Appeals’ website.

ARGUMENT

The statute at issue

Evading arrest requires “intentionally flee[ing] from a person [the defendant] knows is a peace officer . . . attempting lawfully to arrest or detain him.”²¹ The offense of escape similarly requires that a defendant must be “lawfully detained” before an escape from detention is criminalized.²² These offenses differ from

²¹ TEX. PENAL CODE § 38.04(a). Authority from this Court indicates the *defendant* need not know that the attempted arrest is lawful. *Jackson v. State*, 718 S.W.2d 724, 726 (Tex. Crim. App. 1986); *Hazkell v. State*, 616 S.W.2d 204, 205 (Tex. Crim. App. [Panel Op.] 1981). But *Hazkell* construed the pre-1993 version of the evading statute which, instead of an element, made an unlawful arrest an exception for the State to negate. It provided:

- (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting to arrest him.
- (b) It is an exception to the application of this section that the attempted arrest is unlawful.

Act of 1973, 63rd Leg., R.S., ch. 399, § 1, Tex. Gen. & Special Laws (S.B. 34) (eff. Jan 1, 1974). The amendment that inserted the requirement of lawfulness into the phrase “knows is a peace officer . . . attempting to arrest him” likely raises new questions about the mental state requirement. In *Nicholson v. State*, No. 10-18-00359-CR, 2019 WL 4203673, at *9 (Tex. App.—Waco Sept. 4, 2019, pet. filed), Chief Justice Gray in dissent opined that the State must prove the defendant knew the attempted arrest or detention was lawful. A petition for discretionary review is currently pending in this Court on that issue. *Nicholson v. State*, No. PD-0963-19 (filed Oct. 28, 2019). Here, it does not matter: Appellant undoubtedly knew about it, having volunteered that information.

²² TEX. PENAL CODE § 38.06(a)(1).

resisting arrest and the defense of forcibly resisting a search, which can lead to a criminal conviction even when the officer acts unlawfully.²³ It is possible that legislators wanted officers to be wholly in the right before criminalizing conduct constituting evading and escape and that the State should prove the righteousness of its officers' conduct for these offenses in particular—even when the defendant has not invoked the remedy of the exclusionary rule. It is more likely a policy choice that citizens facing plainly unlawful police conduct may rely on self-help (rather than sorting it out in the courtroom later), as long as it does not involve the use of force, which would “present[] too great a threat to the safety of individuals and society.”²⁴

While “lawfully” is not statutorily defined, the Penal Code definition of “law” includes the federal and state constitutions and statutes and “a written opinion of a court of record.”²⁵ In this context, “lawfully” might conceivably include actions

²³ TEX. PENAL CODE § 38.03(b) (“It is no defense to prosecution under this section that the arrest or search was unlawful.”); TEX. PENAL CODE § 9.31 (limiting use of force to resist a search or seizure “even though the arrest or search is unlawful”).

²⁴ See *State v. Mayorga*, 901 S.W.2d 943, 945 (Tex. Crim. App. 1995) (explaining resisting arrest’s rejection of the common law right to the use of self-help to resist an unlawful arrest) (quoting *Barnett v. State*, 615 S.W.2d 220, 223 (Tex. Crim. App. 1981), and *Ford v. State*, 538 S.W.2d 633, 635 (Tex. Crim. App. 1976)).

²⁵ TEX. PENAL CODE § 1.07(a)(30).

consistent with the Fourth Amendment, Article I, § 9, Texas’s statutory requirements for lawful arrests, and various court opinions interpreting those provisions.

Discovery of the warrant rendered the detention Appellant fled from “lawful.”

Discovery of the arrest warrant made Appellant’s subsequent detention lawful in every sense. An arrest warrant is a magistrate’s order “commanding” a peace officer “to take the body of the person accused of an offense to be dealt with according to law.”²⁶ It authorized—even “compelled”²⁷—Appellant’s arrest. A seizure commanded by a magistrate who had probable cause that was independently developed and pre-existed Heizer’s interaction with Appellant was undoubtedly “lawful.” As the Seventh Circuit explained:

It would be startling to suggest that because the police illegally stopped an automobile, they cannot arrest an occupant who is found to be wanted on a warrant—in a sense requiring an official call of “Olly, Olly, Oxen Free.” Because the arrest is lawful, a search incident to the arrest is also lawful.²⁸

The Supreme Court in *Strieff* came to the same conclusion when it characterized the legality of police conduct (as opposed to the admissibility of evidence) following

²⁶ TEX. CODE CRIM. PROC. art. 15.01.

²⁷ *Utah v. Strieff*, 136 S. Ct. 2056, 2063 (2016).

²⁸ *United States v. Green*, 111 F.3d 515, 521 (7th Cir. 1997).

discovery of a warrant: “once Officer Fackrell was authorized [by the warrant] to arrest Strieff, it was undisputedly lawful to search Strieff as an incident of his arrest....”²⁹ As Strieff himself remarked in his brief:

Strieff has never claimed that the arrest was unlawful or that the arrest warrant itself is suppressible. As the court below correctly observed, “[n]o one is contesting—or even could reasonably contest—the arrest on the outstanding warrant.”³⁰

While the Supreme Court went on to consider attenuation of the taint to determine if *evidence* was obtained through the exploitation of an earlier illegality and thus should be suppressed, it recognized that *seizing* the subject of the arrest warrant was perfectly lawful despite the earlier illegality.

In Appellant’s case, confessing that he had an outstanding warrant had the effect of acquiescing to the legitimacy of his arrest. His arrest was also consistent with the Fourth Amendment, the Texas Constitution, and the statutory requirements for arrests—all which have a strong preference for warrants. This was more than sufficient to establish Officer Heizer’s attempted arrest or detention was lawful.

²⁹ 136 S. Ct. at 2063.

³⁰ Brief of Respondent Strieff, *Utah v. Strieff*, No. 14-1373, at 25 (U.S., filed Jan. 22, 2016) (citations omitted, citing Utah Supreme Court opinion, *State v. Strieff*, 357 P.3d 532, 546 & n.12 (Utah 2015)), *available online* at https://www.scotusblog.com/wp-content/uploads/2016/02/14-1373_resp.authcheckdam.pdf.

The exclusionary rule’s derivative taint doctrine does not apply to evading’s lawful-arrest-or-detention element.

Although the court of appeals does not expressly say so, it appears from its quick resolution of the issue after concluding the detention was prolonged (and its summary rejection of the State’s motion for rehearing) that it found Appellant’s detention unlawful because it was derivative or “fruit-of-the-poisonous-tree” of that prolonged detention. But that doctrine, like attenuation of the taint, is a product of the exclusionary rule,³¹ and not fit for the question of whether the detention Appellant fled from is lawful.

The exclusionary rule was created to enforce the Fourth Amendment. First, it barred the admission of unlawfully obtained evidence.³² Later, it barred any *use* of that evidence³³—either obtained directly from the violation or more distantly derived from it.³⁴ Although attorneys and courts sometimes say that an arrest is unlawful

³¹ *Strieff*, 136 S. Ct. at 2061.

³² *Weeks v. United States*, 232 U.S. 383, 393-94 (1914).

³³ *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920); *Nardone v. United States*, 308 U.S. 338, 340-41 (1939).

³⁴ *Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963).

because it stems from a suspicionless stop,³⁵ the exclusionary rule’s bar on evidence derived from an initial illegality does not purport to determine the inherent lawfulness of any subsequent police action—just the admissibility of evidence with a causal connection to the illegality. And apart from the exclusionary rule’s doctrines, nothing in the text of the Fourth Amendment, Article I, Section 9 of the Texas Constitution, or Chapter 14 of the Code of Criminal Procedure governing arrests makes it illegal to detain or arrest a person on a warrant if there has been an earlier violation or if the police would not have been where they were but for an earlier illegality. It is only in the federal and state exclusionary rules.³⁶ It is incongruent to extend an exclusionary rule concept of derivative taint to the question of whether an officer is acting lawfully when a defendant flees from him. Each stage of conduct should be separately judged by what makes that conduct lawful—not

³⁵ See, e.g., *Rodriguez v. State*, 578 S.W.2d 419, 420 (Tex. Crim. App. 1979) (finding evidence of evading arrest insufficient because, as there was no reasonable suspicion for the initial detention, the defendant’s “subsequent arrest would be tainted and therefore unlawful”). In *Rodriguez*, there was no intervening discovery of a warrant, and thus no other basis, as there was in the instant case, for upholding the subsequent arrest.

³⁶ See *United States v. Leon*, 468 U.S. 897, 906 (1984) (“the use of fruits of a past unlawful search or seizure ‘work[s] no new Fourth Amendment wrong.’”) (quoting *United States v. Calandra*, 414 U.S. 338, 354 (1974)).

based solely on something that happened earlier up the causal chain.³⁷ The court of appeals erred to reflexively apply the doctrine of derivative taint beyond its exclusionary rule origin.

Even so, exclusionary rule doctrines may be caught up in the “lawful” element.

Even if the exclusionary rule doctrines are not, strictly speaking, a good fit for determining whether a particular seizure is “lawful” as an element of evading, the legislature may have intended them to be incorporated. For example, when this Court considered what was meant by the term “arrest” for the related offense of escape, it applied a term of art from the Fourth Amendment.³⁸ It also incorporated the Fourth Amendment’s legitimate-expectation-of-privacy standard into a definition relevant to the wiretapping statute.³⁹

³⁷ See *Townes v. City of New York*, 176 F.3d 138, 145 (2d Cir. 1999) (rejecting application of fruit-of-the-poisonous-tree theory to damages in § 1983 actions because it “would vastly overdeter state actors”); *Reich v. Minnicus*, 886 F. Supp. 674, 681–82 (S.D. Ind. 1993) (explaining in § 1983 context: “The exclusionary remedy does not operate to characterize all subsequent conduct ‘unconstitutional’ simply because a previous step was defective”).

³⁸ *Medford v. State*, 13 S.W.3d 769, 773 (Tex. Crim. App. 2000).

³⁹ *Long v. State*, 535 S.W.3d 511, 520 (Tex. Crim. App. 2017), *cert. denied*, 138 S. Ct. 1006 (2018).

More importantly, *Woods v. State* appears to treat the evading element of lawfulness as incorporating fruit-of-the-poisonous-tree doctrine.⁴⁰ Woods was detained on suspicion he may have possessed a marijuana cigar when he fled from police. Through a pretrial motion to suppress, Woods challenged the officer's suspicion to detain him and attempted to suppress the officer's testimony of all the events that occurred following his initial detention as fruit of the poisonous tree.⁴¹ Although the holding is that this issue cannot be raised in a pretrial motion, its rationale certainly indicates a detention could be unlawful because of the fruit-of-the-poisonous-tree doctrine:

Appellant in essence tried to argue that the prosecution could not prove one of the elements of the crime; the prosecution could not prove the detention that he evaded was lawful. If the trial judge granted the motion for suppression of the flight and ensuing arrest, the State could no longer prosecute Woods for evading detention. Appellant was asking the judge to rule whether or not an offense had actually been committed.⁴²

As a practical matter, it may make sense to morph exclusionary rule concepts into “lawfulness” since a defendant invoking the exclusionary rule in a mid-trial

⁴⁰ 153 S.W.3d 413, 415 (Tex. Crim. App. 2005).

⁴¹ *Id.* at 414.

⁴² *Id.* at 415.

suppression hearing could suppress all the *proof* of a later detention as evidentiary fruit of an earlier illegality. And, as a policy matter, it may be too difficult to tease out application of these doctrines. Fourth Amendment questions are almost always litigated in the context of a suppression hearing where the exclusionary rule's application is the whole point.⁴³

If one exclusionary-rule doctrine applies, they all do.

One thing is certain: if the fruit-of-the-poisonous-tree doctrine applies, then so do the related doctrines of independent source and attenuation-of-the-taint. In the earliest cases prohibiting the admission of evidence derived from an illegality, the Supreme Court recognized independent source⁴⁴ and attenuation:

Sophisticated argument may prove a causal connection between information obtained through illicit [search] and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint. A sensible way of dealing with such a situation—fair to the intentment of [the statute at issue],

⁴³ *Long*, 535 S.W.3d at 519 (“Ordinarily, the determination of whether a legitimate expectation of privacy exists is litigated in the context of a motion to suppress rather than as an element of an offense.”).

⁴⁴ *Silverthorne Lumber Co.*, 251 U.S. at 392 (“this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others...”).

but fair also to the purposes of the criminal law—ought to be within the reach of experienced trial judges.⁴⁵

The warrant was an independent source for Appellant’s detention.

Under the independent source doctrine, “evidence derived from or obtained from a lawful source, separate and apart from any illegal conduct by law enforcement, is not subject to exclusion.”⁴⁶ Here, the warrant pre-existed the officer’s interaction with Appellant and provided a basis for his arrest that was, as in *Strieff*, “wholly independent” of the earlier unlawful detention.⁴⁷ It is also consistent with Texas’s exclusionary rule, which prohibits inevitable discovery but permits the independent source exception, because the warrant was not actually “obtained” in violation of the law since it was not derived in any way from a prior instance of illegal conduct.⁴⁸ In the exclusionary rule context, Appellant cannot suppress himself as fruit of an illegal detention.⁴⁹ Nor do facts become “sacred and

⁴⁵ *Nardone*, 308 U.S. at 341.

⁴⁶ *Wehrenberg v. State*, 416 S.W.3d 458, 465 (Tex. Crim. App. 2013). *See also Segura v. United States*, 468 U.S. 796 (1984).

⁴⁷ *Strieff*, 136 S. Ct. at 2063.

⁴⁸ *Wehrenberg*, 416 S.W.3d at 467-68.

⁴⁹ *United States v. Crews*, 445 U.S. 463, 474 (1980) (“Respondent is not himself a suppressible ‘fruit,’ and the illegality of his detention cannot deprive the Government of

inaccessible” once they are the product of an illegal search or seizure.⁵⁰ Here the only fact derivative of an illegally prolonged detention was Officer Heizer’s discovery of the warrant. But the State should not be made any worse off by suppressing the existence of the warrant itself, which would render his detention lawful, even if Heizer did not know about it.⁵¹ It thus was justified under the independent source doctrine.

Discovery of the warrant purged any taint.

Alternatively, discovery of the warrant attenuated any taint. In the exclusionary rule context, the three factors set out in *Brown v. Illinois*⁵² determine whether an intervening circumstance, like the discovery of an arrest warrant, purges any taint on the evidence from the initially illegality.⁵³ The court considers (1) the

the opportunity to prove his guilt through the introduction of evidence wholly untainted by the police misconduct.”).

⁵⁰ “If knowledge of them is gained from an independent source they may be proved like any others.” *Murray v. United States*, 487 U.S. 533, 538 (1988) (quoting *Silverthorne Lumber*, 251 U.S. at 392).

⁵¹ *Strieff* expressly left open the possibility that a warrant’s mere existence could render a detainee’s arrest lawful—even if the officer was not aware of it. 136 S. Ct. at 2062.

⁵² 422 U.S. 590, 603-04 (1975).

⁵³ *Strieff*, 136 S. Ct. at 2061-62; *State v. Mazuca*, 375 S.W.3d 294, 306 (Tex. Crim. App. 2012) (finding discovery of warrant is never “wholly determinative” in the attenuation

“temporal proximity” between the unconstitutional conduct and the discovery of evidence, (2) the presence of intervening circumstances, and (3) the purpose and flagrancy of the official misconduct.⁵⁴ Modified to fit the circumstances of subsequent police conduct instead of the discovery of evidence, these factors favor finding that any taint from the unlawfully continued detention is purged by the revelation of the warrant.

Here, the prolonged detention was close in time to the discovery of the warrant—both having taken place during the initial moments of the officer’s interaction with the people arriving at the house.⁵⁵ “But when an outstanding arrest warrant *is* discovered . . . the importance of the temporal proximity factor decreases.”⁵⁶ Here, the discovery of the warrant strongly favors attenuation because the warrant predated and was independent of the officer’s detention. And like the

calculation and applying *Brown v. Illinois* factors).

⁵⁴ *Strieff*, 136 S. Ct. at 2062.

⁵⁵ Defense counsel identified the start of the encounter at 8:44 a.m. and discovery of the warrant from dispatch at 8:50. 3 RR 39, 42. Regardless, only a “substantial time” lapse would favor attenuating taint. *Strieff*, 136 S. Ct. at 2062.

⁵⁶ *Mazuca*, 375 S.W.3d at 306. Both *Mazuca* and *Strieff* hold that the third factor is of greatest importance in the evidence suppression context. *Id.*; *Strieff*, 136 S. Ct. at 2062.

officers in *Strieff* and *Mazuca*, the officer's misconduct here was not purposeful or flagrant. As the court of appeals acknowledged, the officer was right to have initially detained Appellant; his mistake was in not permitting Appellant to leave once he had been identified. This intrusion, while it may have been mistaken, was brief and appeared to have been made in good faith.⁵⁷ This was not the flagrant conduct the third *Brown* factor was designed to combat: a dragnet sweep of suspicionless stops in hopes of finding a warrant to provide after-the-fact justification.⁵⁸ Instead, the officer briefly prolonged his detention to find out who he was dealing with. A warrant check is routinely authorized for traffic stops.⁵⁹ And Appellant's initial detention was not much different from such a stop.

Conclusion.

Officer Heizer's attempted arrest of Appellant was lawful because an arrest based on a facially valid warrant is always lawful. Alternatively, if suppression

⁵⁷ It can be inferred that the single officer likely felt overwhelmed in dealing with six people who all arrived on the scene in a short period of time. He testified that he should have called for backup as soon as he approached, but did not think about it because he was so "concerned with everybody, all the stuff going on." 3 RR 90.

⁵⁸ See *Mazuca*, 375 S.W.3d at 305.

⁵⁹ *Strieff*, 136 S. Ct. at 2063 (citing *Rodriguez v. United States*, 135 S. Ct. 1609, 1616 (2015)).

doctrines apply, it was lawful either because the warrant provided an untainted reason for the detention or because discovery of the warrant purged any taint.

PRAYER FOR RELIEF

The State of Texas prays that the Court of Criminal Appeals reverse the judgment of the court of appeals finding the evidence insufficient to support a finding that the attempted detention was lawful, and remand to the court of appeals for consideration of Appellant's remaining points of error.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that, according to Microsoft Word's word-count tool, this document contains 3,823 words, exclusive of the items excepted by TEX. R. APP. P. 9.4(i)(1).

/s/ Emily Johnson-Liu
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 5th day of December 2019, the State's Brief on the Merits was served *via* email or certified electronic service provider on the parties below.

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